

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1906.

No. 1666.

No. 5, SPECIAL CALENDAR.

CHARLES E. THORN, JOSEPH A. THORN, AND HELEN  
THORN McLAUGHLIN, APPELLANTS,

*vs.*

SARAH A. THORN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

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# In the Court of Appeals of the District of Columbia.

No. 1666.

CHARLES E. THORN ET AL., Appellants,  
*vs.*  
SARAH A. THORN.

1 Supreme Court of the District of Columbia, Probate Court.

Estate of JAMES ADDISON THORN.

Legal Representatives.

Charles E. Thorn (removed) Administrator.	Domicile District of Columbia. Date of Death June 16, 1905. Bond \$1000. Special \$1000. Special. Surety Sarah Addison Thorn.
Sarah A. Thorn Administra- trix.	National Surety Co. of N. Y., Solici- tors for Estate Charles E. Thorn. Gittings & Chamberlin.

Date.  
1905.

Proceedings.

June 20 Petition of Charles E. Thorn for letters of administration  
filed.  
“ Waiver of all of next of kin, filed.  
“ Order granting letters of administration to Charles E.  
Thorn. Bond Special \$1000.  
“ Oath of Administrator.  
“ Oath of Surety.  
“ Bond executed.  
“ Bond approved and letters issued. Special Bonds # 4  
folio 684.  
Oct. 9 Petition of Sarah Addison Thorn for revocation of letters of  
administration and letters of administration filed.  
“ Rule issued *vs.* Charles E. Thorn to show cause. Return-  
able Oct. 20, 1905.  
20 Order continuing hearing on said petition and rule for  
two weeks.  
Nov. 3 Answer of Charles E. Thorn to rule to show cause, filed with  
affidavits.  
“ Order accepting resignation of Charles E. Thorn as Adm'r.  
“ Order referring cause to Auditor to determine domicile of  
said deceased.  
9 Plea to the jurisdiction of the Court, filed.  
11 Demurrer of Sarah A. Thorn to petition filed Nov. 9, 1905.  
1—1666A

Nov. 15 Motion of Joseph A. Thorn *et al.* by att'ys to refer petition filed Nov. 9, 1905 to Auditor.

22 Order overruling demurrer and referring petition to Auditor.

1906.

Jan. 26 Report of Auditor filed with testimony.

30 Exceptions to Report of Auditor, filed by H. T. McLaughlin.

Feb. 1 Exceptions of Charles E. Thorn to Report of Auditor, filed.

5 Exceptions of Jos. A. Thorn to Report of Auditor, filed.

20 Order overruling exceptions to Auditor's Report, ratifying and confirming report of Auditor and granting letters of administration to Sarah Addison Thorn. Bond \$1000. Special.

" Appeal noted. Bond \$100.

" Oath of administratrix.

21 Bond completed.

23 Bond approved and letters issued. Sp'l. Bonds # 4, folio 821.

Mar 13 Order authorizing deposit of \$50.00 with Register of Wills in lieu of appeal bond.

" Receipt of James Tanner for \$50. deposited into registry of Court in lieu of Appeal Bond, filed. Receipts # 7, folio 272.

15 Order permitting papers to be removed from files temporarily.

April 18 Order extending time for filing transcript of record until May 1, 1906.

27 Order extending time for filing transcript of record until May 7, 1906.

" Transcript of testimony, filed.

" Stipulation of Attorneys, filed.

3 Supreme Court of the District of Columbia, Holding a Probate Court.

No. 13003, Administration.

*In re* Estate of JAMES ADDISON THORN, Deceased.

To the Honorable Justice, Holding a Probate Court:

Your petitioner, Charles E. Thorn, respectfully represents:

1. That he is a citizen of the United States and resides at 35 Carleton Place, Westfield, Union Co., New Jersey, & is a member of the bar of this Court.

2. That the above named James Addison Thorn, was a citizen of the United States, & a resident of the District of Columbia, departed this life on June 16, 1905, at said District of Columbia in his twenty-third year.

3. That said deceased died intestate to the best of your petitioner's

knowledge, information & belief, search and inquiry having been made in such places and among such persons as would likely disclose such will did it exist.

4. That the said deceased left surviving him as his next of kin & heirs at law the following named persons:

Sarah Addison Thorn, his mother, residing at 4007 Fifth Street, N. W., Washington, D. C.; Joseph A. Thorn, his brother, whose address is in care of Sarah Addison Thorn, as above; Charles  
4 E. Thorn, his brother, your petitioner, whose address is 346 Broadway, New York City; and Helen T. McLaughlin, his sister, whose address is 4007 Fifth St., N. W., Washington, D. C., who are all of sound mind & more than 21 years of age.

5. That said deceased died unmarried and left no adopted child or children.

6. Said deceased died seized and possessed of no real estate, but was possessed of the following personal property, to wit, and interest in the estate of Columbus W. Thorn, deceased, valued at about Ten thousand Dollars and wearing apparel of no intrinsic value. Said deceased left no other property to the best of petitioner's knowledge, information & belief.

7. That the debts due by said decedent at the time of his death including funeral expenses will not exceed \$500.

Therefore ask that letters of administration upon the estate of said decedent be issued to me upon giving such bond as may be ordered by the Court.

C. E. THORN, *Petitioner*.

DISTRICT OF COLUMBIA, *City of Washington*, ss:

Charles E. Thorn being first duly sworn deposes and says: I am the petitioner named in the foregoing petition subscribed by  
5 me. I have read the same and it is true to my own knowledge except as to the matters therein alleged upon information & belief and as to those, I believe it to be true.

C. E. THORN.

Sworn to before me this 19<sup>th</sup> day of June, 1905.

[SEAL.]

BURR N. EDWARDS,  
*Notary Public, D. C.*

\* \* \* \* \*

6 We, the undersigned, being all the next of kin and heirs at law of the above named James Addison Thorn, do hereby severally appear herein and do specifically waive the service of citation upon the application of letters of administration upon said decedent's estate and request that such letters may be issued to Charles E. Thorn, and do hereby request the Court to fix the amount of the bond of said administrator at the sum of one thousand (1000) Dollars pursuant to the provisions of Sec. 275 of the Code of

Laws for the District of Columbia, hereby waiving any other bond by said Administrator.

SARAH ADDISON THORN.  
JOSEPH A. THORN.  
HELEN T. McLAUGHLIN.

Witness as to all:

BESSIE G. VAN VRANKEN.  
KATE BRIDENER THORN.

\* \* \* \* \*

7 Upon consideration of the petition filed in the above entitled cause praying for the grant of letters of administration upon the Estate of the above named decedent, and the waiver of citation & consent by all the next of kin, and on motion of Charles E. Thorn, Esq., the petitioner appearing in person, it is this 20th day of June, 1905,

Adjudged, ordered and decreed that Charles E. Thorn be and he hereby is appointed Administrator of the estate of said decedent upon his giving a special bond in the penalty of (\$1,000) One thousand Dollars conditioned for the faithful performance of his duties, & pursuant to Section 275 of the Code of Laws of the District of Columbia.

WENDELL P. STAFFORD, *Justice.*

\* \* \* \* \*

8

Form No. 46.

Amount of Bond, \$1,000.

Supreme Court of the District of Columbia, Holding a Probate Court.

I, Sarah Addison Thorn, do solemnly swear that I am owner of real estate in the District of Columbia of the actual value of about Twenty five thousand (25,000.) dollars, situated as follows: #1832 Sixteenth St., N. W., Washington, D. C. upon which there are encumbrances of Four thousand (4,000) dollars; and that I am not surety on any bonds.

SARAH ADDISON THORN.

Sworn to and subscribed before me, this 20th day of June, 1905.  
[NOTARIAL SEAL.]

BURR N. EDWARDS,  
*Notary Public, D. C.*

(Endorsement: Oath of Surety. Taken June 20, 1905. Filed June 20, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)



9

Form No. 46.

In the Supreme Court of the District of Columbia, Holding a  
Probate Court.

DISTRICT OF COLUMBIA, *The United States of America, to wit:*

To all persons to whom these presents shall come, Greeting:

Know ye, that administration of all the money, goods, chattels, rights, and credits of James Addison Thorn late of the *the* District of Columbia deceased, is hereby granted and committed unto Charles E. Thorn, Administrator, and of the State of New York.

Witness the Honorable Harry M. Clabaugh, Chief Justice of said Court, this 20th day of June, A. D. 1905.

Attest:

M. J. GRIFFITH,

[COURT SEAL.] *Deputy Register of Wills for the District  
of Columbia, Clerk of the Probate Court.*

Case No. 13,003.

(Endorsement: Letters of Administration. Issued June 20, 1905. Filed Jun- 20, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

10 In the Supreme Court of the District of Columbia, Holding  
a Probate Court.

13003, Administration.

*In re* the Estate of JAMES ADDISON THORN, Deceased.

To the Honorable Justice Holding a Probate Court:

Your petitioner, Sarah Addison Thorn, respectfully represents:

1st. That she is a citizen of the United States and a resident of the District of Columbia, and resides at No. 4007 Fifth Street, Northwest, in the City of Washington.

2nd. That she is the mother of the late James Addison Thorn, deceased, who was a citizen of the United States and a resident of the District of Columbia, and who died intestate on the 16th day of June, 1905, in the City of Washington, in the 23rd year of his age.

3rd. That the said decedent died unmarried, and left surviving him as his next of kin and heirs at law, the following:

Sarah Addison Thorn, his mother, your petitioner, residence, 4007 Fifth Street, Northwest, Washington, D. C. Joseph A. Thorn, a brother, residence, Oakland, Md. Charles E. Thorn, a brother, residence, Westfield, New Jersey. Helen T. McLaughlin, a sister, residence 4007 Fifth Street Northwest, Washington, D. C., all adults.

4th. That said decedent left no real property, but left  
11 personal property, which consists of an interest in the estate  
of his late father, Columbus W. Thorn, deceased, which in-

terest is valued at about Nineteen thousand Dollars, (\$19,000.00), which is wholly within the District of Columbia, and in the hands of Mr. Eldred G. Davis, the Collector of Taxes of said District, the trustee of the estate of the said Columbus W. Thorn, deceased.

5th. That the debts due by said decedent at the time of his death, including funeral expenses, will not exceed Five hundred Dollars (\$500.00).

6th. That heretofore, to wit, on the 20th day of June, 1905, within four days next succeeding the death of the decedent, Charles E. Thorn, esquire, a son of your petitioner, a brother of the decedent, a lawyer by profession and a member of the bar of this Court, informed your petitioner that the brothers and sisters of said decedent were, under the laws of the District of Columbia, entitled to the estate, and thereupon your petitioner, believing this information to be true, and relying thereon, was induced by the said Charles E. Thorn to give her written consent to the petition filed by him praying that he be granted letters of administration upon said estate; whereupon, to wit, on the said 20th day of June, 1905, this honorable Court granted him letters of administration, upon which your petitioner qualified as his sole security in the sum of One thousand Dollars (\$1,000.00). Your petitioner has since been advised by her counsel, whom she recently consulted, that she was misinformed by the said

Charles E. Thorn, and that the brothers and sisters are not  
12 entitled to said estate, but that she, the mother, is wholly entitled thereto, and has the primary right of administration, under the laws of the District of Columbia.

Wherefore your petitioner prays:

That the letters of administration heretofore granted as aforesaid to Charles E. Thorn, be revoked, and in lieu thereof that this honorable Court grant such letters to your petitioner; and for such other and further relief as the nature of the cause may require.

SARAH ADDISON THORN,

*Petitioner.*

GITTINGS & CHAMBERLIN,

*Solicitors for Petitioner.*

DISTRICT OF COLUMBIA, ss:

I, Sarah Addison Thorn, do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof, the facts therein stated upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

SARAH ADDISON THORN.

Sworn and subscribed to before me this 4th day of October, 1905.

HOWARD M. NORRIS,

[NOTARIAL SEAL.]

*Notary Public, D. C.*

\* \* \* \* \*

13 On consideration of the petition of Sarah Addison Thorn, filed in the above entitled cause on the 9th day of October, 1905, it is this 9th day of October, 1905 ordered, that Charles E.

Thorn, administrator, heretofore appointed by this Court in the above entitled cause, show cause to this Court on or before the 20th day of October, 1905, why the letters of administration heretofore granted to him on the estate of the late James Addison Thorn, deceased, should not be revoked as prayed for in the petition of Sarah Addison Thorn; provided, however, that a copy of this rule and a copy of the petition be served upon said Charles E. Thorn at least two (2) clear days before the date named herein for the return hereof.

WENDELL P. STAFFORD, *Justice*.

\* \* \* \* \*

14. In the Supreme Court of the District of Columbia, Holding a Probate Court.

No. 13003, Administration.

*In re Estate of JAMES ADDISON THORN, Deceased.*

*The Answer of Charles E. Thorn to the Petition Filed Herein and the Rule to Show Cause Issued Thereon.*

For answer this respondent says:—

First. He admits that the petitioner is a resident of the City of Washington, District of Columbia.

Second. He admits that she is the mother of the late James Addison Thorn, deceased, and that the said decedent departed this life at the City of Washington, District of Columbia in the twenty-third year of his age, but he denies that the said decedent was a resident of the District of Columbia and calls attention to the affidavits attached hereto which he prays to be made part hereof as if herein specifically set forth.

Third. He admits that the decedent died unmarried and left surviving him the next of kin and heirs at law as set forth in this paragraph.

Fourth. He admits the allegations contained in the fourth paragraph excepting as to the value set upon the interest of the decedent in the estate of his late father, Columbus W. Thorn, deceased,  
15 and he is not advised as to the exact amount of said interest, but believes the same to be about \$12,000.

Fifth. He believes the allegation of the fifth paragraph is correct.

Sixth. Answering the sixth paragraph this respondent says that the petitioner is his mother and that at no time or place did he deceive her as to the rights she may have had in and to the estate of the decedent, the brother of this respondent; that when he informed his mother that the brothers and sister of the said decedent were entitled to the estate he believed the same to be true as it has been many years since he was familiar with the laws of the District of Columbia, being a lawyer in the City and State of New York; that in preparing the petition filed in this cause praying that letters of administration

issue to him, to which his mother, brother and sister assented, in which he recited that his deceased brother was a resident of the District of Columbia, this respondent says that the same were prepared by him while under the stress of great grief and distress of mind over the death of his said brother, and were prepared hurriedly and without mature consideration, owing to respondent's imperative professional engagements which necessitated his immediate return to the City of New York, that for that reason and because of the fact that his brother died in this city, and that respondent's mother, and sister were living therein, without thinking on the subject, this respondent inadvertently stated the residence of his brother to be the District of Columbia; that in truth and in fact his said brother was not a resident of the City of Washington, District of Columbia, but was a resident and a citizen of the State of New Jersey and had lived

16 therein at Westfield, Union County, for over two years before his death, and where he was duly registered as a voter and where he voted. This respondent desires to deny absolutely that he attempted to mislead his mother in any particular whatsoever, as at the time of the waiver on her part he was under the impression that she had no interest in the estate whatsoever. This respondent denies that he induced his mother to give her written consent to the petition filed by him by reason of such information on his part, as his mother, as well as his brother and sister and himself, thought she had no interest in the estate and she so informed this respondent when he asked her to consent to his appointment as administrator.

Respondent, as well as his brother and sister, have at all times since the death of said decedent, been and now are willing that the petitioner should share in the distribution of the estate of said decedent equally with them, and said petitioner was so informed by this respondent at the time when she, as well as this respondent, his brother and sister, believed that said petitioner had no interest whatsoever in said estate.

In view of the fact that his mother now appears to be dissatisfied with his acting as administrator and raises the question as to his right to act as such, and believing that administration of the estate of his late brother can only be granted in the domicile of the decedent, to wit, in the County of Union, State of New Jersey, he prays the Court to accept his resignation as administrator. He also requests the Court that the prayer of the petitioner praying that letters of administration issue to her be not granted for the reason that the domicile of the decedent was in the State of New Jersey,  
17-29 and desires that a hearing be had upon her application for administration to give this respondent an opportunity to be heard.

C. E. THORN.

WOLF & ROSENBERG,  
*Attorneys for Respondent.*

STATE OF NEW YORK, *County of New York*, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my own personal knowledge are true, and those stated upon information and belief, I believe to be true.

C. E. THORN.

Subscribed and sworn to before me this 1st day of November, A. D. 1905.

V. S. COLLINS,  
*Notary Public, New York Co.*

\* \* \* \* \*

30 Upon consideration of the resignation of Charles E. Thorn, Administrator herein, it is by the Court this 3d day of November, A. D. 1905, Ordered and Decreed that said resignation be, and the same is hereby accepted.

By the Court:

WENDELL P. STAFFORD, *Justice.*

\* \* \* \* \*

31 This cause coming on to be heard on the petition of Sarah Addison Thorn, and the answer thereto, it is this 3rd day of November, 1905, ordered that the same be and it is hereby referred to the Auditor of the Supreme Court for the District of Columbia, to determine the domicile of the deceased.

WENDELL P. STAFFORD, *Justice.*

\* \* \* \* \*

32 Petition of Joseph A. Thorn, Charles E. Thorn, and Helen T. McLaughlin, respectfully represents:

First. That they are the brothers and sister of the late James Addison Thorn, who departed this life on the 16th day of June, 1905.

Second: That these petitioners desire to enter of record their objection to the administration of the estate of the late James Addison Thorn in the District of Columbia, and for reason therefore state that this Honorable Court has no jurisdiction over the Estate of the late decedent. The domicile of the decedent at the time of his death was in the Town of Westfield in the State of New Jersey and that the decedent was only temporarily staying in the District of Columbia, being here on account of ill health and being on a visit to his mother and sister.

J. A. THORN.

C. E. THORN.

HELEN THORN McLAUGHLIN.

\* \* \* \* \*

33 Now comes the petitioner, Sarah Addison Thorn, and demurs to the petition filed herein on the 9th day of November, 1905, by Joseph A. Thorn, Charles E. Thorn and Helen Thorn McLaughlin, and says, that the same is bad in substance.

One of the matters in law intended to be argued is that they have not shown any reason why letters of administration on the estate of James Addison Thorn should not be granted to Sarah Addison Thorn as prayed in her petition, as this honorable Court has jurisdiction over said estate, owing to the decedent having left property in the District of Columbia.

GITTINGS & CHAMBERLIN,  
*Solicitors for Sarah Addison Thorn.*

\* \* \* \* \*

34 Comes now Joseph A. Thorn, Charles E. Thorn and Helen T. McLaughlin by their attorneys, Wolf & Rosenberg, and move the Court to refer to the Auditor of this court their petition filed herein on the 9th day of November, A. D. 1905, so that the same may be considered in the reference in this cause heretofore passed by this Honorable Court.

WOLF & ROSENBERG.

Messrs. Gittings & Chamberlin, Attorneys for Sarah Addison Thorn:

Take notice that the above motion will be called to the attention of the Judge presiding in Probate Court on Wednesday, November 22nd, at 10:00 o'clock A. M., or as soon thereafter as counsel can be heard.

WOLF & ROSENBERG.

\* \* \* \* \*

35 Upon consideration of the petition of Joseph A. Thorn, Charles E. Thorn and Helen T. McLaughlin and motion filed herein by said petitioners to have referred said petition to the Auditor of this Court, to be part of the reference heretofore made to him in this cause and consideration of the demurrer to the said petition, it is by the Court this 22nd day of November, 1905, Ordered that said demurrer be and the same is hereby overruled and the said petition referred to the Auditor as prayed.

By the Court:

WENDELL P. STAFFORD, *Justice.*

36 In the Supreme Court of the District of Columbia.

No. 13003, Administration.

*In re* JAMES A. THORN.

This cause is referred to the Auditor of the Court to determine the domicile of the deceased. After due notice I proceeded with the reference and I return with this report and as a part thereof the evidence submitted by the respective parties in the reference.

James Addison Thorn was born in Washington where he lived with his parents until the death of his father in 1888, and afterwards with his mother until about twenty years of age. About September 1902 he went to Westfield in the State of New Jersey where his brother Charles resided and entered into the employment as clerk with a firm of stock-brokers in the City of New York. After remaining with that firm for a time he changed employers and until the time of his leaving New York was in the employ of a firm, described here as Watson and Alpers, also stock brokers. During this period of time he boarded in his brother's house in Westfield paying monthly therefor the sum of twenty-five dollars. This continued until in the fall of 1904 when he was informed by physicians that he had a serious case of tuberculosis and was advised to go to Arizona or some south-western locality and in November he gave up his employment in New York, left Westfield and came to Washington. After remaining in Washington a few weeks he went to Phoenix, Arizona, where he remained until the following March when he returned to Washington in a condition of health not improved by his

37 stay in Arizona. While in Washington at this time he was advised by his physicians to go to Saranac New York and try the effect of the climate and locality and his mother went to that place for the purpose of procuring a cottage, then sending for him with the intention of remaining with him during his stay at that place. During her absence James was taken with a hemorrhage and moved to the hospital in Washington where he died on the 16th of June 1905.

The issue presented by the petitions and other proceedings in the case is as to the domicile of the decedent at the time of his death. Ordinarily the presumption attaches that the place of the death of a party is his legal domicile. In the present case however, it is contended by the brothers and sisters of the deceased that he was domiciled in the State of New Jersey as a resident of Westfield. A very considerable amount of proof has been offered tending to show the domicile at Westfield as claimed and very material evidence tending to establish a domicile in Washington.

Domicil is of several kinds, but two of which are necessary to be considered for the purposes of this reference. These are the domicile of origin and the domicile of choice. Unquestionably his domicile of origin is the City of Washington, the place of his birth, the home of his child-hood, youth and man-hood until in September 1902. Such domicile is presumed to continue until its abandonment and the choice of a new domicile is conclusively established, the burden of proof being upon those who claim the latter. There are some rules which have been established by Courts and elementary writers of which a few are applicable in this discussion; first, that domicile of origin is most favored as to its continuance; and second, that

38 domicile of origin reverts more easily than a domicile of choice. The domiciliary conditions existing during the period of two years from 1902 to 1904 were these. A clerk in the office of a firm of stock-brokers in New York City, a pay boarder in the house of Charles E. Thorn in Westfield, he had no property or business

interests binding him to either place. There were no grounded ties of location or family to create in him a preference for either place over the City of Washington. Evidence is offered to establish by declarations and acts during this period an intention to make Westfield New Jersey his permanent home. Several witnesses testified to statements made by him that such was his intention, that among his contemplated plans for the future was the purchase of a seat in one of the stock exchanges of New York City and doing business as a broker on his own account.

Among the acts relied upon to establish the permanent domicile in New Jersey is that he was registered and voted in Westfield in the local election of either 1903 or 1904, there being some doubt as to the precise date. This however did not involve a personal application or declaration of intention, the registration being made by house to house canvas.

The act of voting is competent evidence tending to show that the party deems himself a resident of the locality in which the right is exercised, but is not conclusive. In the case of *East Livermore vs. Farmington* 74 Me. 154, it was held the act of voting in a town while of importance as bearing on the question of settlement is by no means conclusive. It is simply a fact with other facts in the case

39 to be weighed by the jury. A case more in line with the conditions here is that of *Lincoln vs. Hapgood* 11 Mass. 350.

Among other acts of the decedent relied upon to establish his domicil in New Jersey is the assertion that when he left Washington he transferred to that place practically all of his personal belongings. This assertion is not sustained by the proof. His personal physical property was extremely limited and much of it was left in Washington at the residence of his mother. What he took to Westfield was articles, light in character and size, such as pictures and personal necessities and there was no time during the two years when he could not without inconvenience have transferred himself and all these belongings in the space of an hour from Westfield to New York where he was in business employment.

The evidence as to so much of this case affects the question whether at any time during that period he definitely abandoned the domicile of origin in Washington, substituting therefor a permanent domicile in the town of Westfield. The acts and declarations set forth in the evidence are consistent with such a theory, while at the same time they are not inconsistent with an intention to retain the domicile of origin with a view to its resumption at some time in the future.

A more important issue here is whether he did not return to his domicile of origin and resume the relations between himself and that locality. In this connection, it is important to note that in a letter written to his mother before leaving New York, this letter being offered in evidence and filed in this reference, the writer states that

40 *he has given up his job in New York, that the day of his writing was his last in the office, that he was sorry in one way and mighty glad in another, that he is coming down to Washington and will then go out to Arizona or New Mexico for six months or a year and will tell you (his mother) all about my*



(his) plans when I see you. This evidence furnished by the decedent is almost if not quite conclusive of his intention to give up New York and New Jersey both as domicile. When he left Westfield, he left behind him no interests requiring his return and in leaving New York he severed all his business interests in that place.

He came to Washington and remained with his mother several weeks during which time he did tell her his plans as promised in his letter. They were then living on Fifth Street beyond the city limits and his plan or purpose as described to her was that when he came back from Arizona or New Mexico he and the mother would take a house in the city and keep house together.

On the 6th of December he went to Phoenix Arizona and remained during the winter. During this time he wrote a number of letters some of his brothers and sister and a large number to his mother. The brothers testify that they destroyed the letters received by them and the sister is unable to find those received by her. On this showing I received the testimony of the witnesses as to the contents of the letters which they describe as declarations of intention of the writer to return to business in New York and residence in Westfield. The same witnesses testify to similar declarations by the decedent during his stay in Washington before going to Arizona. On the

41 other hand we find testimony that during this period he expressed himself dissatisfied with the position he had held in New York and was desirous of procuring employment in Washington.

In this conflict of testimony as to the intentions of the decedent under the authorities the presumption would be in favor of the domicile of origin, the city of Washington. Fortunately, however, the case furnishes unquestionable proof made by the decedent himself in record form, being the letters before referred to as written to his mother during his stay in Arizona. It is hardly necessary to recall the rule that written declarations are more reliable than oral statements, especially when the latter are recitals of the contents of written instruments. The few letters placed in evidence by the brothers and sister appear upon examination to be confined to expressions of regret at the inability of the writer to be present at specified social gatherings and special events, such as the marriage of his correspondent. In no one of these letters does he express an intention to return to New York or Westfield. In nearly all of the letters produced by the mother some nineteen or twenty of which are identified and filed in evidence, the writer expresses his desire for *home*, distinctly referring to the *home in Washington* and they all show deep affection for his mother and filial relations more than ordinarily close and confidential. He frequently speaks of plans for the future but in no case connects these with either New York or Westfield.

In a letter written February 6, 1905, he uses this language: "When  
42 I get back to Washington, think I will fight it out there, don't reckon I will go beyond walking distance of the dinner bell again. It is only two months and then I can come home again. How is everything at home, I sure would like to be there.

We will go somewhere this summer and next winter if I am O. K. I will go up to Oakland and stay at Millers." In another letter he says, "I have been thinking of starting home in a week or two but am afraid of the weather, I may come any way and have a shed built out on the porch off the bath room and try the home cure." Again in another letter he says, "I think I will be home by April 1st however, and take my chance there," and again in still another letter, "I am coming home and try to forget my troubles," in this letter he refers to an incubator and says, "If you haven't got one we will get one when I get back and try it."

Again he writes thanking his mother for sending a check and says that he will save it until he gets home and then writes, "Well I will soon be home now for better or worse." I quote from another letter the following: "I am pretty sure of starting Sunday, we will talk over the Oakland trip when I get back, just at present Washington is all I want."

In March he returned to Washington and resumed his residence with his mother and sister. Testimony is offered for the purpose of showing his intention to still return to New York and Westfield, most of this testimony being given by the brothers and sister. Among others a witness, who was a nurse at the hospital where he died, testified that he spoke to her of an expectation to go back to New York and buy a seat on the stock exchange and go into business for himself, that he said he lived with his brother in Westfield New Jersey.

43 Assuming that these declarations of intention as testified to by these witnesses were actually made after his return from Arizona, there still remains the fact of an actual abandonment on the 16th of November, 1904, of residence or domicile in both New York and Westfield, and if during the later days of his illness after the fatal symptoms had made their appearance and when he knew that his span of life was numbered by days if not hours, he gave utterance to such declarations it is difficult to conceive that there was in his mind a serious determination to again abandon the domicile of his origin for any other location. To establish again a domicile in New York or Westfield would require the union of *animus et facta*, the intention and the act, wanting the act it failed of completion and the domicile of origin remained.

Upon the proof conclusive as it seems to me, I find first that if a domicile was at any time established in Westfield New Jersey, it was definitely abandoned in November, 1904, followed by the reverter to and resumption of his domicile of origin in the District of Columbia.

I find that this domicile continued to and at the time of his death.

JAS. G. PAYNE, Auditor.

\* \* \* \* \*

Mr. CHARLES E. THORN testified that he was a brother of the late James A. Thorn; that he is an attorney at law, practices in New York

City, and resides at No. 35 Carlton Place, Westfield, Union County, New Jersey; that at the time of the death of James A. Thorn the family consisted of Mrs. Sarah A. Thorn, Joseph A. Thorn, Helen T. McLaughlin, and the witness, all of full age. That witness's father died April, 1888. That James A. Thorn, the decedent, resided in Westfield, New Jersey; came there the first of September 1902, Labor Day; that he was employed in New York City, first with Fairbairn & Hilliard, stock brokers, and later with Watson & Alpers; that he worked for these two firms the whole time he was in Westfield, during which time he stopped at the home of witness, Carlton Place, Westfield. That witness had correspondence with his mother before his brother came to his house; that she wrote him that James was getting older and growing, as she expressed it, away from her, and expressed a desire that witness take charge of him, which he agreed to do; that when he came to Westfield he brought with him his possessions in the way of clothing and articles he had in his bedroom at home, and put them in his room at Westfield; that he made arrangement to pay witness \$25.00 per month for his room and

45 board, which he paid up to the time he left Westfield, November 26, 1904. That decedent stayed with the firm of Fair-

bairn & Hilliard about a year and then went with the firm of Watson & Alpers, where he stayed until he left Westfield. That when he first came to Westfield he was rather dissatisfied, but after being there about a month he joined a club, and got acquainted with the people and interested in his work and he was then perfectly satisfied with Westfield, and after he had been there a year he applied for registration as a voter; over objection witness stated that he told witness that he had been speaking with one of the Registration Officers as to being registered as a voter; witness was at the polls in Westfield when his brother, the decedent, voted, and saw him vote, and in voting he gave his name as James A. Thorn, and his residence as 35 Carlton Place, Westfield; that the proceeding was the usual form of voting in Westfield and was the same that witness went through when he voted; that this voting by decedent was after a conversation had with him as to his intention to register; that it was the spring election of 1904 or the fall election of 1903; that witness's relationship with his brother was of a close and intimate character; that James was in Westfield every night, and frequently went back and forth on the train night and morning with witness; that they often discussed decedent's plans and future intentions touching his residence, and in those conversations he told witness that as soon as he familiarized himself more fully with the details of the brokerage business he intended to buy a seat on the Consolidated Exchange and go into business for himself; that he liked New York very much to do business in; it was a hustling, active place and he thought there

46 was plenty of money there and a good opportunity for a young man with ambition; that he said to witness that while he had not liked Westfield at first he liked it very much then,—these conversations occurring about six or eight months after he came there,—and it was an ideal way to live—to do business in New York and live out in the country. That decedent went to Washington occasionally to visit his mother and on several occasions after

his return he spoke in a disparaging way of Washington, he did not see how he ever managed to live there 19 or 20 years before he came to Westfield, and that he never intended to return there to live; that he spoke several times of his mother attempting to induce him to come back, which he refused to do, witness thinks she had attempted to exercise her authority as his guardian to compel him to come back; that decedent said he told her he was sorry to cross her, but he did not want to come back, as he did not like it any more; that they had conversations of similar character at other times, when he expressed his intention of remaining in Westfield, which extended over a period of six months to a year after he got there. That about October, 1904, decedent said his doctor had told him he had tuberculosis, and directed him to go to Phoenix, Arizona, and that he was going to give up his position with Watson and Alpers, but he was only going temporarily, intending to come back in a couple of months; that he said he had a conversation with the people at his office about getting his job back, and they promises to keep it for him, but that he did not know whether he would take it, or buy a seat on the Consolidated Exchange; but he had every intention to return to Westfield, and asked witness to save his room for him and permit his things to remain in his room, as it was his intention to return to Westfield, and the things have been and are still in the room as they were when he left. That in November, 1904, witness  
47        asked him if he had voted, and he said he had not, that he had started to the polls with Carroll Lord, a friend, and they were afterwards going to the Golf Club; they got to the corner where they took the car for the Club, and Carroll said: "Here is the car," and instead of voting they went to the Club. That decedent had been examined by his physician who told him he had tuberculosis, and ordered him to go to Phoenix for a few months for his health; that a day or two before decedent left Westfield, he said he was going to Phoenix to stay several months, but his departure was only temporary, and he was coming back, and expected to get his position in New York, or else was going into business for himself, in any event, he was coming back to Westfield to live. That on several occasions he used the expression "Westfield looks pretty good to me," and at one time they discussed the question of moving to New York, but decedent was much opposed to it; that when decedent was in Phoenix he wrote witness from time to time, which letters witness destroyed, and finally in March, 1905, witness received a letter from him in Washington saying he was in Washington for a short time, only temporarily, that Phoenix had done him no good; that he was going either to Asheville, or to the Adirondacks, and hoped shortly to come back to Westfield to live; he would take up his old position, and expressed his intention, if he could not get his old position to buy a seat on the Consolidated Exchange; that witness had several other letters from him after he reached Washington in March, 1905, and before he went to the Hospital in May, which letters witness has been unable to find after search, in them decedent said that he thought he would stay in Washington until the weather was warmer, then he thought he would go to the Adirondacks and spend the summer, and

in the fall, witness might expect him back to Westfield to live again; that witness saw him personally in Washington the first few  
48 days of April, 1905, when he renewed the statement contained in his letters that he was only back in Washington temporarily and expected to leave as soon as it got a little warmer and go to the Adirondacks, that he would stay there the balance of the summer and then he expected to come back to Westfield to live; that he also talked about his plan to buy a seat on the Consolidated Exchange and seemed strongly inclined to it; that after that decedent corresponded with witness until he could no longer write, and in all letters made inquiries about Westfield and said he was sorry he had ever come back to Washington and did not think it was doing him any good; that just before he left Westfield he received a tax bill from the Clerk of Westfield Township for \$1.00 poll tax, and handed it to witness and asked him to see it was paid; has hunted for the tax bill but has been unable to find it; that witness saw him at the Hospital prior to his death and had a conversation with him in which he expressed his regret at coming to Washington and was anxious to get away from there; and said he was going to the Adirondacks as soon as he was able to get on his feet, that he would stay there during the summer and as soon as he was better would come back to Westfield to the home of witness, and when he got back he was going to work, or he might buy a seat on the Exchange if he was in condition to do so. That in August, 1904 he bought a suit case which he carried, marked on the end "J. A. T., N. Y. C." or New York City;" that Westfield is eighteen miles from New York, and it takes forty-five minutes to go there; that on at least three different occasions just before he left for Phoenix he stated in positive words that Westfield was his home; he had no intention of living in Washington again; that decedent died in Washington, June 16, 1905.

49 That on the day after decedent died there was a talk between witness and his mother brother and sister in reference to what was to be done respecting his brother's interest in his father's estate; that witness had been in the city for two or three weeks altogether, away from business in New York, and was very anxious to get back at it was nearing the end of the term before the recess of the Courts; that they concluded that witness should be appointed administrator, and his mother expressed some surprise that she should be consulted, she said she understood that she had no interest in the estate, and he told her he understood that the estate would go to the children, but independently of whether it went to them, she should have her equal share of it, she thereupon said she agreed that witness should be administrator and would go on his bond; that the death of his brother was very painful to them all, and he was suffering from a severe mental distress and was in a hurry to get back to New York; thinking to save as much expense as possible to the estate he went down to the Probate Court and spoke to the Deputy Register of Wills, who handed him some papers to copy by; that he copied these exactly, substituting the name of his brother; that witness knew he had died in Washington, and without stopping to think whether he was a resident of Washington or New Jersey,

he wrote out the petition and signed and swore to it, and then took it to his mother, who signed a waiver, as well as his sister and brother, and he took the papers down to the Court the same day and filed them and had letters issued on them, and took the train and went home; that in the great hurry he was in he did not know whether he stated decedent was a resident of the District of Columbia or not.

On cross-examination, witness said that the property left by the decedent at Westfield consisted of a large number of photographs, several of his fraternity pictures, several sofa pillows, 50 at least one, vases, mugs, a few books, pair of curtains, a rug and the stuff that a young man generally has in his room; that decedent had an automobile which he bought after he came to Washington from Phoenix. On redirect examination he stated that he had bought it to keep him out in the open air, and asked what witness thought of the roads and whether he could take it to New York; that they also discussed the fact that when he took it to Westfield he would have to keep it in the garage as witness had no barn, or place where it could be kept near the house; that witness has destroyed all letters received from his brother, the decedent, with the exception of one or two of the last he wrote; that he destroyed them because his brother was suffering from a disease that was highly infectious.

That his brother had no other furniture than that which was at Westfield, all of which was left at the house in Westfield, with the possible exception of a few things, he may have left a couple of posters in his room here.

Mr. JOSEPH A. THORN testified that he was the oldest brother of the decedent, and resides at Oakland, Md., that the last time he saw his brother was at his death bed; that the first conversation had with him regarding the place he considered his home was at 564 St. Mark Avenue, Brooklyn, N. Y. where witness was then residing; that there was present at that conversation witness and his wife, Mrs. Sarah A. Thorn, his mother, and decedent. That in the conversation between James A. Thorn and his mother, in which his mother was urging him to return to Washington to live he said that he did not intend to return to Washington to live, that New York was a much better place to live, and that he should continue to 51 work in New York and live with his brother until he married; that this occurred the last part of November, 1903, at which time his mother was visiting witness at his house, and James came there to spend the evening; that witness did not hear the first part of the conversation, when he came in his mother was relating how lonely she was, and how much she missed him from her house, and she was urging him to return, and he point blank refused to return to Washington to live, she then threatened to invoke her authority as his guardian, he declined to come back and the matter was dropped; that during the year 1904, witness had a talk with decedent; that witness was leaving New York for an indefinite time, and on July 2nd, went to Westfield, to his brother's house, where

Charles E. and James A. Thorn resided; that he talked with James in the library and urged him to abandon the work he was then doing, because he looked so badly, and take up a more outdoor life; asked him to go to Washington for a trip and then to the mountains; that decedent declined to do so, saying he would lose his position, and good jobs were not picked up every day; that he expected to be promoted soon and intended to remain in Westfield; that witness received a letter from him in February, 1905, which letter had been destroyed, as he had been advised by his brother Charles that anything from James was very infectious; that decedent stated he was very homesick and intended to return to Westfield and live; that during May, 1905, he talked with decedent in Washington, walking up with him from 7th and Pa. Avenue to the B. & O. Railroad Station, and during that conversation witness asked him what his plans were, to which he replied that he was going to the Adirondacks, and when he got better, he was going to New York, and take up his work, and reside with Charles; that James was in  
52 Oakland in 1904, in the early part of August, and was looking badly, and witness urged him to remain and spend a few weeks in Oakland with him; that he replied that he would lose his position and that he intended to return to his work and to Westfield to live; that his intention was when he became better acquainted to buy a seat on the Consolidated Exchange; that witness had a talk with him on the subject of marriage, and he said it was his intention to marry a girl of some means, if he could get her, and live in some place outside of New York, and travel back and forth just like his brother did—that he liked country life; that the suit case marked “J. A. T.” on one end and “N. Y. C.” on the other was at the B. & O. Station at the present time, and belonged to James; that it was taken to the Columbian University Hospital, 1335 H Street, where his brother died; knows of no other furniture or effects or clothing other than what his brother had at Westfield, and at the Hospital; that at Oakland, in 1904, a week or ten days after the conversation before testified to, witness urged James very strongly to remain with him and not return to Westfield, or if he would not do that, to remain in Washington, and not work again, and he positively refused to do so; that he said he intended to return to Westfield and re-enter the stock broker’s office and continue to live with Charlie. No cross-examination.

Mrs. HELEN THORN McLAUGHLIN testified that she is a sister of the late James A. Thorn, and lives at 4007 Fifth Street, N. W., Washington, D. C., that she is the wife of John C. McLaughlin; that Mrs. Sarah A. Thorn, her mother, lives with her; that she moved out with her permanently last September, but had been with her for  
53 about nine months prior to that; that her brother James, prior to his death, resided at Westfield, N. J., and had resided there about two years, or a little over; that he left Westfield on account of his health and came to Washington for a short visit and then went to Phoenix; that he told her that when he returned he intended to go back to New York and obtain his old position, which



they had promised to save for him; that he did not go to Saranac, but went to the hospital instead; that this conversation was held sometime after his return from Phoenix, and about a month prior to his going to the hospital; that he was at the hospital about three weeks; that he said that his visit here was temporary, because he intended to go to Saranac later, and from there back to New York, and get his position, and of course live with his brother in Westfield; that since her brother's death witness has been to Westfield, and was in the room occupied by him, saw his effects there; that none of his effects are anywhere else, excepting the things he brought from Arizona, which are at the house of the witness; that she corresponded with him while he was at Westfield and received letters from him in which he spoke of his intention to remain in New York; that she does not know whether these letters have been destroyed; that she looked for them and could not find them; that while her brother was in Washington he bought an automobile for the benefit of his health and requested witness that when she went to Saranac to make arrangements for his going there to see whether the roads were good, and whether she thought it likely that he could use the automobile in riding around the country, and that if he could he would have it shipped on before he left Washington; that she went with her mother to Saranac to secure a home for her brother there during the summer, and when they returned he was in the hospital; that he was going to Saranac upon the advice of his physician, Dr. Richardson.

54 Upon cross-examination witness said that she saw her brother prior to his going to Arizona; that he did not tell her it was his intention to reside in Arizona; that he did tell her that his physician had ordered him there for a couple of months; that when he returned from Arizona he was considerably worse; that he stated his intention of going to Saranac, where he had been ordered by Dr. Richardson; that he returned to Washington for a visit after his return from Arizona, and told her he wanted to sleep on the top of witness's kitchen while he was at her house; at the time James went to Westfield, witness lived with her mother at Oakland; that she was not keeping house but living with her mother at that time.

Mr. JOHN C. McLAUGHLIN testified that he lives at No. 4007 Fifth Street, N. W., that Helen Thorn McLaughlin is his wife; that he knew James A. Thorn for about fourteen years; that during his last illness he came to the house of witness on his way to Arizona; that upon his return from Arizona he remained at the house of witness from March until the latter part of May, at which time witness took him to the George Washington Hospital, 14th and H Streets, northwest; that after his death witness visited Westfield, No. 35 Carlton Place, with his wife and saw the room occupied by James; that it was located on the third floor, south side of the house; that the room contained the ordinary furniture of a bedroom, pictures were on the wall, rug and such things; that he recognized the pictures, rugs, pillows and other things as belonging to James A. Thorn; that be-



fore decedent went to Westfield, witness lived with his mother—all lived together, and witness became very familiar with all of Thorn's things; that Mrs. Thorn, the mother, now lives at the house of witness; that some of the things he saw Thorn had taken with him when

55 he went to Westfield; that witness knows of no other personal effects that decedent had, other than what he saw at Westfield, except wearing apparel which he brought with him when he came from Westfield. That witness had a talk with James in the Empire Building, New York, where he was employed, at the time of the International Yacht Races; that at that time James lived at Westfield; that he went out every night and came back in the morning; that witness knows this from conversation he had with him as to his going out on the trains; that he had several such conversations with him; that he had a talk with decedent concerning his domicile, and where he intended to live; that this conversation took place in the side yard of witness's house, where they were sitting, in the spring and prior to the time decedent went to the hospital; that at that time James had received a letter from someone in New York, who told him that one of the employees had been put on the floor of the Exchange; that James said he was sorry he had left New York at that time, as he would have had this position, and he was not sure that they would take this man off the floor when he went back and give him the place or not; that he thought possibly he had lost the chance to get on the floor of the Exchange; that he then spoke about returning to New York and going in the employ of the same people; that he also spoke at times of purchasing a seat on the Consolidated Exchange in New York, and going into business for himself; that he spoke about Westfield in this conversation and talked of his home there, what a nice time he had there at the Golf Club; that he frequently spoke about his brother Charles' home; that all of his conversations, all the way through, whenever they had any, about New York, it was understood that he was going back with his brother; he spoke about going back to his home; that witness

56 was of the opinion that it was the intention of James A. Thorn to return to Westfield; that he never spoke of Washington as his home. On cross-examination witness stated that when he went to Westfield he saw a number of effects of James A. Thorn in his room; that he had brought his clothing with him; that witness saw several articles there and saw the stuff a young man generally has in his room; that James lived with his mother prior to going to New York, at which time witness also lived with Mrs. Thorn; that the furniture in the house in which they then resided belonged to Mrs. Thorn, and some belonged to the witness and some belonged to James personally; that the will of Columbus Thorn provided that the furniture and household effects owned by him should remain in the possession of his widow for the benefit of all the minor children; that the furniture that belonged to James he had purchased, and some of it, when James went to New York, witness bought from him—a bookcase and several other things witness had purchased. That the man on the floor of the exchange does the buying

and selling for the house, and on the occasion of the conversation which witness has related, James said that if he had gotten the position at that time he would have learned so much more about it, and have been able to open up a business for himself; that he said the firm had placed one of the clerks on the floor to do the buying and selling, and that they had bought a seat for this young man; that when witness was at Westfield the room was completely furnished with bedroom furniture; that witness received letters from decedent, but did not keep any; that he knew Mrs. Thorn was receiving communications from decedent, but he never heard them read.

Miss ALICE TAYLOR STABLER testified that she was a nurse at George Washington University Hospital, 1335 H Street, N. W., that she never knew James A. Thorn before he came to the hospital; that she was a patient there; that she nursed him at the hospital; that he was suffering from tuberculosis; that she was one of the special  
57 nurses, he had two; that she saw him half of the time; that he was rational most of the time, up right until the last; that she had conversations with him as to where his domicile was, and she remembers one particularly wherein he spoke of being in business in New York, and living with his brother in Westfield; that his one object at that time was to go to the Adirondacks, and then he expected to go back to New York and buy a seat on the stock exchange; does not believe that he said whether he was in business for himself or with someone else, but he said he expected to go into business for himself—he said he hoped to; that he said his home was with his brother in Westfield; that he said “I live with my brother in Westfield, New Jersey, was in business in New York, before I was taken sick;” these were his words as near as I can remember; that after he left the hospital he wanted to go right to the Adirondack mountains; that he said he had bought an automobile, and he wondered if witness thought he could use it in the Adirondacks, when he went there; that witness has not the slightest interest in the matter, and does not know what the controversy is about.

58 On cross-examination she testified as follows:

By Mr. GITTINGS:

Q. How old a man was Mr. Thorn? A. I do not know.

Q. How old did he appear to be? A. Twenty-three or twenty-four.

Q. You said that he said he expected to get well and go back to New York? A. He used to ask me if I thought, saying “because I expect to be well, and expect to go back to New York.”

Q. Did he say he wanted to go back to New York? A. He expected to go back.

Q. Did he say he was living in New York, where did he say he was living? A. He had been living in New York before he was sick, then he went out west, after he broke down, he came back to Washington.

Q. He didn't say he was in business in New York, at the time he was taken to the Hospital? A. He was not in business in New York just at that time, he expected to go back to his business after he recovered.

Q. Didn't he tell you he had given up his place? A. No.

Q. Didn't speak about that at all? A. No.

Q. Did he tell you who he was employed by in New York? A. He did not.

Q. Did he tell you where he lived, when he was in business in New York? A. Lived with his brother Mr. Charles Thorn.

Q. Did he tell you that, or did his brother tell you that?  
59 A. He told me. He spoke of being devoted to this brother.

Q. Did he say that he had been living with his brother in New York, or did he say he resided with his brother in New York? A. He resided with him, his brother in New York, before he was taken sick.

Q. He didn't say Westfield was his home when he was in the hospital? A. Yes, his home was in Westfield, while he was sick he was staying simply temporarily with his brother in law, Mr. McLaughlin.

Q. Do you mean to say that he told you that he was only temporarily in Washington and that his home was in Westfield, New Jersey? A. He was temporarily in Washington.

Q. Those were his words to you? A. That was what he said, I don't know his exact words.

Q. What physician was attending him at that time? A. Dr. McPherson.

Q. What was the occasion of his speaking about his home and who brought it up? A. I think I was teasing him about New York, and about the people who lived in New York, that they never cared to live anywhere else, and that I wondered how he could stand to live in Washington, I know I was teasing him about being a New Yorker.

Q. Didn't you know he was born and lived in Washington nearly all his life? A. I did not know anything about him until he came to the hospital as a patient.

Q. How did you know he was a New Yorker? A. He told  
60 me so.

Q. Then it was he told you he expected to go back to New York? A. Yes.

Q. And he was going to buy a seat on the exchange? A. Yes, he said he had property of his own, and that was what he expected to do.

Q. Did he ever mention going to any place, except New York? A. He said he would never go West again, he was terribly homesick while he was there.

Q. Did he say he was going to South Carolina? A. No, he said one of the Doctors had advised him to go on account of his health, but he did not want to go.

Q. Did he give any reason why he did not return to Westfield instead of coming to Washington? A. No.

Mr. THOMAS L. WATSON testified as follows: That he is a member

of the firm of Watson & Alpers, Brokers, No. 55 Broadway, New York; that James A. Thorn was employed as a clerk by his firm; that he had been there about a year, that ill health was the occasion of his leaving; that at the time of his leaving witness expressed his regret that he was to leave his employ, and told him that he had always been very attentive to work, and Thorn replied that he regretted going; that he had to go West for his health, and witness told him that when he was able to return they would be glad to take him back; he said he hoped to be able to return soon; that witness  
61 does not think they would have kept the position open, but stated to Thorn that they would be glad to have him *some* back, and that that would naturally mean that they would make a place for him when he could come back.

On cross-examination he stated that Thorn's salary was \$12.00 per week, or about \$50.00 per month, and he had been in their employ for about a year.

Mr. JOHN FANNING testified that he was margin clerk of Watson and Alpers, and had been in their employ between five and six years; that he knew James A. Thorn personally, and worked right next to him; that he was employed there over a year and was purchase and sales clerk; that they were always very friendly; that the degree of intimacy had existed between them the same as any other clerk would be, who worked next to him; that he would see him every day; that Thorn talked about his affairs in this way—he came there to learn the business and expected in a short space of time after he learned it thoroughly to be a floor broker in the Exchange; that their intimacy continued from the time of Thorn's employment up to the time of his leaving; that before he left witness said to him “So you are going to leave us, Jim?” he said: “Yes, I am going out West on account of my health. I am all run down, but I expect to be with you boys again in a short space of time as the position has been held open for me.” The position he held was that of Purchase and Sales clerk; that this conversation occurred before he left in 1904; that he said he expected to be back in about six months if he got better, or eight months, according to how he felt, he did not expect to be away long.

On cross-examination he said that he was intimate with Thorn outside of business the same as he would be with any other clerk; that they were in the habit of going out together after business hours;  
62 that he had dinner with him at least twenty or twenty-five times; that these were occasions when the work was quite heavy and required them to stay downtown; that they had spent evenings together as social friends for an hour or so; that he thought Thorn was a quiet man; that he never discussed his family affairs with witness or any of the clerks; that he knew he was a man of means and did not depend upon the salary he got; knew it from the way he lived; that Thorn told him he was worth a little money, but did not say how much; that other clerks in the office were as intimate with him as witness; that decedent stated that he came there to learn the business and get a small salary, and his ambition was to be

a broker on the Consolidated Exchange, those seats being very cheap, the market price of them being about \$2500.; that Thorn said his doctor had ordered him to go West for his health because he was all run down.

On re-direct examination he stated that before Thorn was employed by his firm he was employed by Fairbairn & Hilliard, Stock Broker-, in New York.

On re-cross examination he stated that Fairbairn & Hilliard are members of the New York Stock Exchange; that James A. Thorn was sufficiently familiar with the stock brokerage business to engage in the same on his own behalf as a floor broker; that a floor broker is a member of any exchange buying or selling stocks on the floor; that to learn the ins and outs of the business it takes about a year, especially to learn the inside; that a floor broker buys and sells stocks and the inside man has to look after the loaning and borrowing of stocks and the loaning and borrowing of money, and has to look out for the customer; that the work Thorn was doing had to do with both floor buying and the office work; that his work was one of the branches of the general office work.

63 Mr. LLOYD THOMPSON, a witness of lawful age, testified as follows:

Q. What official position do you hold in Westfield? A. Town Clerk.

Q. For what period of time have you been Town Clerk? A. Since the spring of 1903.

Q. Are you familiar with the requirements of voters in this district? A. I am.

Q. Where do you derive that knowledge from? A. From the fact that I am Town Clerk and an attorney at law of this State.

Q. What are the requirements to be a voter in Westfield?

Objected to by Mr. Gittings, as being wholly a question of law, and of the further ground that this case is in a United States Court and United States Courts take cognizance of the laws of other States. The matter is not susceptible of proof in the United States Courts.

Q. How long have you been a practising attorney? A. I have only been admitted in the State of New Jersey since the fall term and in the State of New York since 1900.

Q. Are you acquainted with the election laws of New Jersey?

Objected to by Mr. Gittings, as being wholly a question of law, and on the further ground that this case is in a United States Court, and United States Courts take cognizance of the laws of other States.

Q. Is the same law in effect in Westfield as in the balance of the State of New Jersey? A. It is.

64 Q. What is that law?

Objected to by Mr. Gittings in the same words as the preceding objection.

A. That a voter must have resided in the State at least one year, and in the County in which he votes at least five months.

Q. Have you any book or register of the Election Board in Westfield, showing who the voters are? A. I have.

Witness produces book.

Q. Will you please look through that book and see if James A. Thorn was a voter at any of the elections, and if so, at what election and what you are reading from?

Cross-examination by Mr. GITTINGS:

Q. What is that book that you propose to read from? A. Register of Voters in the General Election of 1904, in the Third election district of the Town of Westfield, Union County, New Jersey.

Q. In whose custody and control is that book? A. Mine, as Town Clerk.

Q. Is that the only book in existence, the only register in existence of the Town of Westfield? A. No, it is not, that is to say, two copies are required to be made, one is filed with the County Clerk, the law requires duplicate copies.

Q. Where have the records of the Town Clerk been kept? A. In the office of the Town Clerk.

Q. Are they records of the office or of the officer? A. They are the records of the office of the Town Clerk, and pass from one Town Clerk to another as a record of the office.

Q. Are they kept as Town Records? A. Yes, sir; on file in the office of Town Clerk.

65 Direct examination continued by Mr. WOLF:

Q. That book has the registry of voters of what election? A. The general election of 1904.

Q. Please examine and see if James A. Thorn is registered therein? A. The name James Thorn appears as a registered voter of that ward at that time in this book.

Q. Residing where?

A. Thirty-five Carlton Place.

It is stipulated between counsel that the registry of voters at the General Election of 1904 for the Third election district, Town of Westfield, County of Union, New Jersey, under the initial "T" contains the name of James Thorn, residing at 35 Carlton Place.

Q. Have you the register of the voters at the general election of 1903? A. I am not certain whether I have or not.

Q. In whose custody can be found the register of voters in 1903? A. It should be in my office, if it exists at this time. The law only requires that it be kept a year. I have not investigated to ascertain whether the 1903 register is in my office or not.

Q. Did you ever have occasion to look in that register of voters to see if the name James A. Thorn appeared therein?

Objected to by Mr. Gittings on the ground that the Register is the best evidence and that the witness says he is uncertain whether the Register is in existence or not.

A. I have seen it in the County Clerk's Register for 1903.

Mr. Gittings moves to strike out the answer.

66 Q. Seen what? A. The name James Thorn.

Mr. Gittings moves to strike out the answer.

Q. For what election? A. 1903.

Q. What search, if any, did you make for the 1903 register? A. I think I made a search of my room for Mr. Thorn recently, but I have not searched the complete files of the Town.

Q. What do you mean by the complete files of the Town? A. I mean all the old records, copies of papers, books, &c., which the Town has and which are very voluminous.

Q. Did you say it was the custom to destroy them after a year? A. No, sir; not the custom, it is not necessary to keep them after a year.

Mr. Gittings moves to strike out all this witness's testimony, as being incompetent, immaterial and irrelevant.

Mr. MATTHIAS MILLER, a witness of lawful age, testified as follows:

Q. What is your occupation? A. Superintendent of a planing mill.

Q. Do you reside in Westfield? A. I do.

Q. For what period of time have you resided there? A. Thirty-five years.

Q. Did you know James A. Thorn? A. Not personally; I knew him as he came in as a voter.

Q. Did you know him by sight? A. I never saw him up to the time he came in to vote.

Q. Did you ever see him vote?

Objected to by Mr. Gittings on the ground that the witness has not shown that he is competent to answer the question, as to knowing the man who voted.

A. I saw somebody vote under the name of James A. Thorn.

67 Q. What position did you hold in relation to the election held here? A. I was judge or chairman.

Q. For what year? A. I think 1902, 1903 and 1904; ever since the Town was divided into wards.

Q. As judge of election what was your duty regarding the voting of the residents of Westfield? A. I took the ballots as they came to the ballot box, and then they gave their name and address and I held the ballot until the clerk called "check," and the ballot was then deposited in the box.

Q. Did you at any of these elections you speak of accept the ballot of James A. Thorn?

Objected to by Mr. Gittings as the witness testified he did not know the man who appeared.

A. I accepted the ballot of a man who gave his name as James A. Thorn.

Q. What was the course of procedure regarding the acceptance and casting of that ballot? A. The same as anybody else. The man came in and was handed a ballot for inspection. He then went into the election booth and prepared the ballot, brought it out and handed it to me, giving his name. The clerk called "check," in looking over their register, and checked off his name to show that he had voted.

Q. Was he accompanied by anybody at that time? A. I think by Mr. Thorn, sitting there.

Q. Do you know Mr. Charles E. Thorn? A. I do.

Q. Then the gentleman who cast the ballot of James A. Thorn was with Mr. Charles E. Thorn? A. Yes.

Q. To your best recollection, what year was that? A. I think, 1903; I am not positive, either 1903 or 1904.

Q. Could any person have voted at the election of 1903 who was not registered? A. I do not think they could; I do not see how.

Cross-examination by Mr. GITTINGS:

Q. You have stated that the voters name is entered on another book? A. Yes, sir.

Q. Who keeps that book? A. One of the Clerks.

Q. It is kept for the purpose of preventing the same name from being voted twice? A. Exactly.

Q. That is the only record then, that is kept to show whether or not the party voted is registered? A. Yes, sir; besides the original book.

Q. You stated, I think, you were not certain whether it was the election of 1903 or 1904 that somebody voted the name of James Thorn, is that correct? A. Yes, sir.

Q. Will you kindly look at this register of voters at the name of James Thorn and state whether or not there is any check mark after his name showing whether or not he voted? A. According to this book he has not voted.

Q. Will you kindly look at the name of Charles Thorn and see whether or not it appears by that book if he voted? A. Charles Thorn did vote according to this book.

Q. The only record which shows whether or not James Thorn voted in the fall of 1904 would be this book which you speak of being kept for the purpose of preventing a party from voting a second time? A. Yes, sir.

Q. How long is that record kept? A. We put the book in the ballot box, and the box is sealed and turned over to the Town Clerk.

Q. It would then be in the custody of the Town Clerk? A. I may be wrong. I don't know whether that is the book that goes to the Town Clerk, or whether it is this book.

Redirect examination by Mr. WOLF:

Q. Having been shown this book by Mr. Gittings, and having seen no check along side of the name of James Thorn and having testified that he voted at one of the elections can you now state



whether it was 1903 or 1904? A. No, sir, I cannot. I am positive he voted at the election of 1903 or 1904, but cannot state positively which one.

Q. Showing you this book and recalling to you that you stated it showed he had not voted in 1904, because there was no check opposite his name, I ask you what does that indicate to your mind as to when he did vote?

Objected to by Mr. Gittings on the ground that the question is a hypothetical one, and the witness is not testifying upon any fact in evidence. He has not said that James Thorn voted at any time, and there is no evidence here that James Thorn was even a registered voter in 1903.

A. It indicated that James Thorn did not vote at this general election of 1904, that was held in the fall; he may have voted in the spring.

Q. How long before the election was the registry made?  
70 A. I think they started in September.

Q. Was that in 1903 or 1904? A. 1903.

Q. In 1904 how long before the voting was it necessary to register or when was the house to house canvass made? A. I think we started in September?

Q. When was the election held? A. The Tuesday after the first Monday in November.

By Mr. GITTINGS:

Q. Was there a separate register or voters kept for the spring election of 1904? A. This book was used for that. We made a copy from that in March, 1904; we make a copy for the spring election from the registry made in the fall. We do not make a house to house canvass in the spring, but we do in the fall.

Q. This record here was compiled from the house to house canvass? A. Yes, sir.

Q. You say the register of voters that was made for the spring election of 1904 was taken from the fall register of 1903? A. Yes, sir.

Q. Is a voter not required to make oath to certain things before being allowed to register? A. Not in the house to house canvass; but when they came to the polls they had to, unless they were known to the Board, or somebody swore them in.

HENRY E. FERRIS, a witness of lawful age, testified as follows:

Q. Where do you live? A. Westfield, New Jersey.

Q. How long have you lived there? A. 34 years.

Q. Did you know James A. Thorn? A. I did.

Q. Do you know where he resided in Westfield? A. Yes,  
71 sir.

Q. Where? A. At No. 35 Carlton Place.

Q. Do you know of your own knowledge that he resided there?

A. No, sir. I had seen him for quite some time with his brother, coming from and going to the train.

Q. Did you ever see him at his or your club? A. Yes, sir.

Q. Here in Westfield? A. Yes, sir; at the Westfield Club.

Q. During the holding of elections in Westfield, do you take any part? A. I am Clerk of the Third Ward.

Q. For what year? A. I think in 1902, 1903, 1904 and 1905.

Q. As such clerk, what were your duties? A. On election day?

Q. Yes? A. As the voters came in to vote they would hand their ballot to the judge, and the judge would call off the name and then I would look on our registry book and see if it was down there, and if it was, we would check the name and the vote would go into the box.

Q. Did you have a view of the ballot box when the man cast his vote? A. Yes, sir.

Q. Can you tell of your own knowledge if during any of those years James A. Thorn cast a ballot? A. I think in 1903, or perhaps the spring of 1904; I think however it was 1903.

Q. On that occasion what did he do? A. He came up to  
72 the judge and gave his ballot to him; the judge called check, and I checked off his name, and he was allowed to vote.

Q. Did you recognize him? A. Yes, sir.

Q. Are you sure who it was? A. Yes, sir.

Q. Who was it? A. James A. Thorn.

Q. Who was with him? A. Charles E. Thorn, his brother.

Q. Was his brother there to vote? A. Yes, sir; they came in together.

Q. Where is that register of voters that you checked in 1903? A. I cannot tell you, it might be in the Elizabeth County Court house, or it might be with Mr. Thompson.

Q. Did you have it before you at the time you made the check? A. Yes, sir.

Q. After the registry of 1903, what registry would follow? A. For the spring election of 1904.

Q. I hand you what purports to be a registry of voters and ask you if it is the registry of voters for the year following the election at which Mr. Thorn had voted? A. It is.

Q. I ask you if you can find therein the name of James Thorn? A. I do.

Q. In whose handwriting is that? A. Mine.

Q. Were you one of the canvassers to go through Westfield to ascertain who was entitled to vote for that election? A. I was.

Q. What inquiry, if any, did you make regarding James A. Thorn? A. I was one of the clerks who went on that street to make a house to house canvass.

73 Q. When he voted in 1903, the year prior to the register you hold in your hand, can you tell us who made up the register of voters for that period of time?

Objected to by Mr. Gittings on the ground that the register would be the best evidence of that.

A. I did.

Q. You say the name of James A. Thorn appeared therein?

Objected to by Mr. Gittings on the ground that the register would be the best evidence.

A. Yes, sir.

Mr. Gittings moves to strike out the entire evidence of this witness as being wholly immaterial and irrelevant to any issue in this case.

Mr. LUTHER M. WHITAKER testified that he resided at Westfield for thirty-eight years, and is the father in law of Charles E. Thorn, and also the Postmaster of Westfield, and engaged in the real estate business. That witness has been Postmaster for eleven years; that he knew James A. Thorn, when he lived with his brother on Carlton Place; that witness would come in contact with him on an average of sometimes two or three times weekly; that Thorn went to New York in the morning and returned in the evening; knew that he was a clerk for a stock broker; witness remembers the occasion of his leaving Westfield for the West; had a conversation with him before he left, the substance of which was that James was feeling very miserable at that time, and he was in hopes that a trip would help him,

74 and that when he came back he would be all right; that witness had another very lengthy conversation with him about the matter; that Thorn expected to return back to the East in about three to four months; that he came down to the post office to say good by to witness, and witness told him that he hoped the trip would do him good, and that when he came back he would be all right, and Thorn said he hoped it would, and that he would come back (it seems to witness he used the word spring), and that when he came back in the spring he would be all right. That a year after Thorn came to Westfield witness suggested his getting registered, and requested his coming out to vote, and in compliance with that request Thorn voted; witness saw him vote; that witness thinks it was the election when Billie Kirk ran for the assembly, 1903; that when witness made the request of him that he register and vote, Thorn had been in Westfield at least a year; that Thorn also voted at a primary election following that.

No cross-examination.

Mrs PEARL THORN testified that she is the wife of Charles E. Thorn, and has lived at Westfield, N. J., with her husband for seven and a half years; that James A. Thorn resided with them about two

75 years and two months, continuously; that the things he brought with him were put in his room and the room was completely furnished; that when he left Westfield the things were just the same; that they were all there with the exception of some pictures and photographs; he took one sofa pillow and a turkish rug and some photographs, and said he would take a few things to furnish a shack or lodge in the West, left all the other things until he came back home again; that when he lived with witness he went to business in the morning at about eight o'clock, and came home about six. In the evening he went calling or to dances or to his

club; that sometimes they had guests at the house and he would remain at home and play cards, etc; that his evenings were practically all spent out there. That witness noticed he was failing in October; that not long before he went away he felt badly, and lay down a good deal at nights, and did not go out as much as he had; that in 1904, in November, before he went away, he said he intended to return; that he left his furniture with that idea; that on the morning he was packing witness was in his room upstairs and he was putting in some pictures and he said he was going to take those few things to furnish his room where he went, and he would leave the others until he came home; that witness had conversations with him innumerable times in regard to his intentions as to his business; that he said during the year prior to his going away that he intended to buy a seat on the Consolidated Exchange; that witness is of the opinion that had been his aim; that he hoped when he got better to come home and buy a seat on the Exchange; that he said that when he came home he would buy a seat on the Consolidated Exchange; that this was two or three weeks before he went away, and while he was

76 talking about coming home; that the entire conversation was that he was going away for his health, and when he returned he hoped to buy a seat on the Exchange and do business in New York, and that he never intended to do business in Washington; that he said that Washington was no business place, and if he ever was rich enough to live there he would do so, but never work there; that this was on an occasion when they were discussing Washington as a place to live in; that James A. Thorn had never indicated in any way that he had any intention to live at any other place than Westfield.

On cross-examination witness said that when James left to go to Arizona he took some of his articles with him, no furniture, only photographs; that witness is not sure about framed pictures; that the articles he took when he went were some of those he brought with him from Washington; that witness never talked with him about getting married; he had no idea of getting married; that he first stated his intention to purchase a seat on the Consolidated exchange about a year before he left, and he talked of it when he was going, that he intended to come back and buy a seat; that he had a great many friends at Westfield, and belonged to the Clubs there; that witness had some correspondence with him after he left; that decedent wanted to go into a broker's office and learn the business; that at that time he had a year's experience in the office, but he needed more experience; that when he left he said that he would leave the things in his room so that they would be there when he came back, and the room was kept for him just as it was when he left; that the things he took were a decidedly small proportion of the things he brought there originally. That he wanted to learn the business so that he could buy a seat on the Consolidated Exchange and do business for himself that conversation was a year before he left New York, and he stated that he did not know sufficient at that time to become a broker; that witness had another conversation

77 with him just before he left that he wanted to buy a seat when he came home; corresponded with him after he left, but not after he returned to Washington from Arizona.

Mr. CARROLL P. LORD testified that he resides at Plainfield, New Jersey and is 30 years old and a salesman by occupation. Plainfield is only five miles from Westfield. They are connected by Railroad and Trolley. Knew the late James A. Thorn. First met him at the Westfield Club, in the latter part of 1901 or in the early part of 1902. Met him on Labor Day of 1902 at 35 Carlton Place Westfield. Had met him continuously from that time, 15 or 20 times a month. Relations between them extremely cordial. Felt toward him as he would feel toward a brother. The last time he saw him was November 26th, 1904 that was the morning of the day he left for Arizona. Spent the previous night with him. The last night he was in Westfield. Slept with him. Talked pretty near all night, until they went to bed. Conversation was about his going to Phoenix and was about his return. Said he was going the next day to Washington to say "good bye" to his mother and then go to Phoenix. He intended to stay in Phoenix for probably three or four months until he felt better and then return to Westfield at the end of that period. We talked about his intention to stay in business in New York. He intended to live in Westfield or thereabouts and do business in New York for the rest of his life. The last conversation was of that order. He said he would not do business anywhere else but in New York and he would live in Westfield or thereabouts, that New York was the only place to make money; that the life in Washington he did not care about that there was no place to do business in. He got in a rut there. Washington mentioned merely

78 from the fact that his mother had persuaded and tried to get him to come back there. That was probably the cause of its being brought up. At numerous times he spoke of having letters from his mother trying to persuade him to come back. He told witness he did not care about going back. He said New York, in his words, "looked good" to him. It suited him and he would not go back to Washington. He said he had declined his mother's request to return. About six months previous to his going West he said the Doctor had told him he was running down and would have to leave here temporarily. He had not determined upon a place, either New Mexico or Arizona. He finally determined upon Phoenix and thought of going there for three or four months until he found better health and then return to Westfield and engage in business in New York, and that he had met the office man of Fairbairn & Hilliard and he said he thought he could get his old position back or perhaps a better one; that he said he anticipated returning in two or four months; this conversation took place at 35 Carlton Place. Saw him in his room there frequently and occupied it with him. The room was completely furnished in every detail. Witness says he showed him the furnishings of the room and pointed out what belonged to him, showing him his pictures and his photographs, sofa pillows, steins, rugs &c. That was a month or so after his arrival.

Their intimacy extended to sleeping together; they frequently occupied the same room and same bed at witness's house and at Thorn's house. Belonged to the same Club at Westfield. In 1903 had a con-

79 conversation with him on the question of voting. On election day of 1903 met him at the Westfield Golf Club. He, Thorn, told witness that he had voted for Billie Kirk for assemblyman that morning and asked witness if he had voted and he talked about Kirk's chances of election and one thing or another. The conversation took place at the Westfield Golf Club in November 1903. In 1904 witness met him at his house. They were going to play in the tournament at the Golf Club that day. They were a little late in getting started and were both anxious to vote and it was Thorn's intention to vote and as witness said he had not voted and thought of voting in the opposite way to that in which Thorn intended to vote, he suggested that they pair their votes and they both went to the Golf Club without voting. Thinks that Thorn had registered. Explained what he meant by pairing votes with Thorn, that he was going to vote for Parker and his running mate, and Thorn was going to vote for Roosevelt and Fairbanks and they agreed to pair them by neither of them voting. He knew Thorn had registered because Thorn had told him so. Thorn told him he had been registered, that he did not register personally because there had been a house to house canvass on the register of the previous election. He, Thorn, also mentioned the fact that he had been registered in 1903 and that he had voted on election day in 1903. When he first came to Westfield he did not like the place. Was homesick and knew few people. His friends were all in Washington and he thought of returning. Afterwards, witness remembers his speaking of remaining in Westfield, because he changed so completely in his views. He met a great many more people. They liked him

80 and he liked them; that he changed his mind and decided to stay. Spoke further in other conversations about matter of residence and said he intended to do business in New York for the rest of his life and that he intended to remain in Westfield, or thereabouts adjacent New York. This was in several probably six or eight conversations along that line. The last conversation was on the 25th of November 1904 the evening before he left. The substance of entire conversation was he said he had been ordered to some other part of the country for a temporary stay until he recuperated; that he finally settled on going to Phoenix where he intended to remain for a period of from two to four months until he felt better and then return to Westfield to take up business in New York; that he had met the business man of Fairbairn & Hilliard and there was a chance of his getting back his old position or a better one and he thought that very likely he would accept it unless something turned up in New York which would better his condition. Corresponded with Thorn and destroyed the letters after answering them. In one letter said he was within 3 pounds of his best weight and considered he was foolish to have gone to Arizona when he might have stayed in New York and continued in business; that he recalls distinctly his saying, in another letter, in speaking of various

things—that witness was to save up a thirst against the day when he struck Broadway.

On cross-examination witness stated that he last heard from him about three weeks before he left Phoenix; and received no letters from him after he returned from Arizona to Washington; 81 that he remained in Phoenix about 3½ months and the last letter he said anything about returning was that he found it did not agree with him there and that before returning here he would perhaps go to Asheville, N. C.; that he had been invited to go there for a time. James A. Thorn in his letters to witness used the expression that before returning to Westfield he would go to some other place. As a matter of fact he never did return to Westfield or New York, because he was taken sick in Washington. He said in his letters that he had left his room just as it was because he expected to return. He was in the habit of talking with witness about his, Thorn's, private affairs because of the friendship between them. The cause of the friendship was a liking for one another. We took a great fancy to each other. Remembers Thorn's signing one letter "Your old buddy." Knew him two years. Used to see him in New York during business hours and called him up on the telephone. He was satisfied with his position with Watson & Alpers at first because there was an improvement over his position at Fairbairn & Hilliard; that he afterwards felt it was a great mistake to leave them because they were stock exchange brokers, and the other was a consolidated exchange house. On re-direct examination he stated he was not related to any of the Thorns and has no interest in this controversy. James A. Thorn wrote him that it was his intention of perhaps going to Washington first with the intention of perhaps going to Asheville, N. C. and perhaps his mother would go to Asheville with him. This was two or three weeks before he left Phoenix. Witness further stated on cross-examination 82 that he knew Charles E. Thorn five or six years, and was intimately acquainted with him before he met James Thorn.

Stipulation is made upon the record by counsel that the hotel register of the Hotel Adams, of December 14, 1904, shows the following entry: "James A. Thorn, New York City;" of the Hotel Chalfonte, Atlantic City, N. Y., of Aug. 8, 1904; "James A. Thorn, New York City;" of the Hotel Plaza, Picway, Ohio, of Nov. 14, 1903, "James A. Thorn, New York City," and that they are all in the hand writing of James A. Thorn.

Thereupon counsel offered in evidence the letters of James A. Thorn of which the following are excerpts:

JAN. 5, 1905.

To C. P. Lord:

"Sure wish I had been on the Golf course with you. By the way, have you any idea when the event (referring to the wedding of Lord) is to take place? I hope I am home for it, but, then, suppose it will be in the South."

Letter of January 4, 1905, addressed to C. P. Lord from Phoenix, Arizona:—

"I sure would like to have been with you Christmas. Have you had any more slips down the hill standing up? I ought to be there to stand in front, as I did last Winter. I'll buy you seven, but lay up a thirst against the day when I hit Broadway again, and we'll have a little dinner."

Letter of December 13, 1904, to Mrs. C. E. Thorn; from Phoenix:

"With all of it though, I am rather homesick for 35 Carlton."

Letter to Mrs. C. E. Thorn, January 4, 1905:

"Sure would like to have been at the Egging party. I can readily imagine the open house at the Golf Club. Rather wish I was there."

Letter, dated January 14, 1905, to John C. McLaughlin, from Phoenix:

"Too bad you did not get on the short side of Cop. One can't always hit it. Wait till I get back, and I may get some more tips."

I heard the other day that if I had stayed with the firm that I would have been put on the floor to trade for the house during the Winter. That meant they would buy me a seat. Hard luck isn't it."

*Testimony Adduced on Behalf of Mrs. Sarah A. Thorn.*

Mrs. Sarah A. Thorn, mother of the late James A. Thorn. Her son during the last two or three years of his life lived at Westfield, New Jersey. Left Westfield about 18 or 20th of November, 1904. Prior to going to Westfield he resided with the witness. After he left Westfield he came to Washington. Witness was then living 4007 5th St. He left Washington on the 6th of December and went to Phoenix, Arizona. During his visit to Washington in December witness says he had quite a number of conversations with him and he said when he got better and came back we would take a house in the City of Washington and go to housekeeping again. Witness says she was then living out in the country; that he often talked with her before he went to Phoenix and also afterwards.

After his return from Arizona he never spoke of returning to New York. Had conversation with him after his return from Phoenix before he was so ill and before Dr. Richardson saw him and told him he would have to go to Saranac, in which he told witness he intended to take a house and they would go to housekeeping together; after his return from Phoenix he never said anything about getting employment, nor did he say anything in reference to his intention about going back to Watson's. After his return

from Phoenix he always hoped to get better. He always spoke of "when I get better," but when he came back he was very much worse than when he went. He wrote that he thought of going down to North Carolina to visit a lady there, who has since become the wife of Carroll Lord, until Dr. Richardson told him he must go to Saranac. He made preparations to go and they intended to take a cottage there and stay until he got better.



After that he proposed to come back to Washington to live. He never said anything concerning where he was going. While he was at Phoenix she had corresponded with him and before his return to Washington from Westfield, prior to his going to Arizona, she received letters from him. Had correspondence with him when he was in Arizona.

Whereupon counsel for Mrs. Thorn offered in evidence 19 letters, hereafter set out, and numbered from 1 to 19.

ROLLETTE CHASE PALMER testified that he lives in the Nantuckett Flats. Is engaged in business in Washington. Worked for Bryan & Company, 15th and F Sts., N. W. Knew the late James Thorn since he was 15 or 16 years old. Was quite intimate with him. Saw a great deal of him. Intimacy was prior to his going to New York. Saw him frequently after his return from Westfield. Saw him before he went to Arizona two or three times, that is, when he came from New York to go to Arizona and at that time wanted to know if there was any way that I could go with him. Did not say anything of his future plans before he went to Arizona. Spoke of resigning his position in New York. Said he was dissatisfied with

85 his work, which was too hard and he was not receiving enough of money, but did not say anything about whether he intended to return to New York or not. Received several letters from him, after he left Washington for Arizona; that he has moved since the letters were received, and cannot find them; that he saw Thorn after he returned to Washington from Phoenix; had been here three or four days before witness saw him. He came in the middle of the week, and witness saw him on a Sunday; that Thorn did not call on witness, who went to his house; saw him three or four times a week; was then employed at Bryan's and Thorn has often met him at one o'clock, and they would lunch together, and every Sunday morning would go to Cabin John Bridge to breakfast. After his return the condition of his health was very much worse; so much so that he told witness he did not expect to get well; did not have any conversation with him regarding his future plans, after his return from Arizona, except as to his going to the Adirondacks. Thorn said he was dissatisfied with his position in New York, and if he could get one here that would pay him a reasonable salary he would take it, that is, after he came back from Phoenix. That we never mentioned his returning to New York or Westfield; that witness always considered himself Thorn's most intimate friend; saw as much of his as anyone else before his going to New York, and returning here and during the time he was here; had no conversation with him after his return of any place being his home, except in a letter he wrote witness from Phoenix. In no conversation did he say anything, either before or after his return from Phoenix of the place he considered his home; in no conversation after leaving Westfield, and coming to Washington did he state whether he intended to return to Westfield, or not.

When his automobile was going pretty fast and witness talked about it, he said that he was going to enjoy it while he could; he

86 knew he was going to die, and he would get what use he could out of it before that; that this conversation took place two or three weeks or perhaps a month—just a short while—before he was taken to the hospital.

On cross-examination witness stated that James Thorn was in Westfield a couple of years, or maybe a little over. When he first came to Washington from Westfield the only conversation witness had with him was that he said he was in very poor health. He said on numerous occasions, after he came back from Arizona that he had no hope of getting well; that he did not say that the reason he left New York was on account of poor health. The time he said he would take a position if he could get it, was when he came through Washington to go to Phoenix, but he never told witness he could get a position in Washington. Entire conversation he had with him was just concerning his health and those plans; that witness knew he had worked for a brokerage firm; he said he had unpleasant work, it was very hard and a very small salary, and he was dissatisfied with it; that witness did not have very much talk with him about his plans.

On redirect examination witness stated that the substance of the letter he had in mind received from Thorn was one in which Thorn said he was very much worse and that he was coming home. He carried some rugs and pictures to Westfield, as witness helped him pack them when he left; that he left the furniture which was in his room; that that was two or three years ago; that witness does not know to whom the furniture belonged—supposed that it belonged to his mother and sister.

87 *Excerpts from Letters Offered in Evidence, Received by Mrs. Thorn.*

No. 1.

Undated.

Envelope Postmarked New Brunswick, N. J., Nov. 12, 1904.

"Charlie has always told you I am coming down to Washington next week. I will reach Washington sometime Saturday. I will only be in until after Thanksgiving, and will then go to Arizona or New Mexico for six months or a year, but will tell you all about my plans when I see you. Gave up my job here this week. To-day was my last in the office and I am sorry in one way and mighty glad in another."

No. 2.

PHOENIX, ARIZONA, Dec. 12, 1904.

"It is a great country out here, and I am going to stick as long as I can, or until I get well."

No. 3.

PHOENIX, ARIZONA, Dec. 24, 1904.

"This is Christmas Eve; the first I have ever spent away from home. \* \* \* I can imagine it at home, with dinner on the table,

Christmas Eve and Louise Jumpin with expectation, and everybody else for that matter."

## No. 4.

PHOENIX, ARIZONA, *Dec. 28, 1904.*

"You remember the chap who could have gotten the job for me in Panama. He is down in North Carolina and wants me to come down there. It might be a good stunt in the spring, if I am better. Will be a gradual coming back to a damp climate."

## No. 5.

PHOENIX, ARIZONA, *Dec. 29, '04.*

"I wish I thought I could come home now, as I should like nothing better than to get a job in the East again. I may be able to come home in the spring, and I am feeling like a fighting cock now. The number of people creeping around nearly gone is what makes it so very depressing. I am sending some little packages home. They are not much, but I hope to be better off next Christmas and at home for Christmas. The package I sent Nellie is for Nellie and Jack. How is everything at home and how are things in Baltimore. By the way, did you find my cameo pin at home. I can't find it anywhere. Must have either left it at home, or lost it. Look in the inside pocket of my dinner coat. Drink an eggnog for me and be sure I am with you all in spirit."

88

## No. 6.

PHOENIX, ARIZONA, *Jan. 5, 1905.*

"I know a few people out here and have gotten used to the place a little, so that it is not quite so bad. It is sure a hard proposition to get a job. When I first got out here I sure was homesick. Didn't know anyone and was blue about myself and things in general. I thought I knew what it was when I sent to New York, but is was nothing compared to this, and I am over it now. I hear I was to have gotten the seat of the Consolidated Exchange for the house I was with if I hadn't quit. Isn't that hard luck though. It sure makes me weep, as it is a chance I may never get again of making a living."

## No. 7.

PHOENIX, ARIZONA, *Jan. 8/05.*

"Have had quite a number of letters from Charlie. I am feeling pretty good. Have gained two pounds. Weigh 163, but my cough still hangs on. Would come back if it wasn't for that. I will in the spring, and will probably go down to North Carolina for the winter. The chap down there, who asked me down, lives there and is a lawyer. I have yet another invitation in Indian Territory, but hardly think I shall go. Some friends of Charlie's whom I have never seen. Homesickness is a mighty bad thing to have, but I will be back in a little while now mother. \* \* \* shake hands with F Street, and everything around Washington for me."

## No. 8.

PHOENIX, ARIZONA, *Jan. 17/05.*

"How is everything at home." Wrote about a job as timekeeper up at a lumber camp at Flagstaff, but have not heard from it yet. I could have gotten a job as book-keeper in a life insurance agency—\$8.00 per week, but I would be penned up inside from eight until five-thirty. Another chap who is here took it, and is very foolish, I think."

## No. 9.

PHOENIX, ARIZONA, *Jan. 13/05.*

"How is everything at home."

## No. 10.

PHOENIX, ARIZONA, *Jan. 29/05.*

"I have been going down hill quite rapidly of late, and was on the verge of giving up and coming home several times. I had hoped to come back in April and go up to Oakland, or down to Atlantic City, with you; but hardly know how things will turn out now. How is everything at home."

89

## No. 11.

PHOENIX, ARIZONA, *Jan. 24/05.*

"How is everything at home. I hardly think I will go up to Flagstaff, as it is most too high and besides I couldn't get the job in the lumber camp. Has Charlie been down to see you all yet? I heard from him the other day. Hope he don't do what I did. One never misses health until it is gone. I was rather sick last week for two days, and sure was homesick. Think if I had been able to travel would be walking in on you in a day or so. I feel lots better now."

## No. 12.

PHOENIX, ARIZONA, *Feb. 6, 1905.*

"Unless Arizona does a lot for me in the next two months, I think I will be back in Washington about the first of April. Reckon it will be warm enough then, though I would come home now if it were warm, but I am afraid to make such a change. Once I get back to Washington think I will fight it out there. Don't reckon I will get beyond walking distance of the dinner bell again. I guess you are right about the homesickness being worse for me than anything. However, it is only two months more and then I can come home. I rather think I will stay here until I hit the trail. How is everything at home. I sure would like to be there. We will go somewhere this summer, and next winter, if I am not O. K., I will go up to Oakland and stay at Millers."

## No. 13.

PHOENIX, ARIZONA, *Feb. 13, 1905.*

"Received a long letter from Nellie the other day in which she spoke of you sending me a letter and a check to come home on. How is everything at home. I sure would like to be there, but I am afraid of the change in climate now. Unless Arizona does quite a little for me between this and April, I think I will start home then, although I almost feel as if when I do come home its means giving up hope of getting well. If Arizona cannot help me I guess nothing can. I would like to be with you all for dinner to-day. Guess you are just sitting down. I can see it and smell it but it is three thousand miles away. Well it may not be long before I come jumping back."

## No. 14.

PHOENIX, ARIZONA, *Feb. 15, 1905.*

"I feel very strongly tempted to start home in a week or so, but suppose it is too much of a change. Don't worry about me. I am feeling better than I did. Time enough to worry when you see me home. You are pretty near right when you say homesickness is the worst sickness, and when it is combined with real sickness it is awful. I tell you it may be my death to come back, but I sure feel like I'd die if I stayed out here. Its mighty kind of you to offer to do all you can to take a house in town, and I certainly appreciate it. Wait till I come back and we will talk it over. Of course,

90 I don't expect you to come way out here away from everything you live for. That would be making an exile of you too. I guess I will come home and fight it out somewhere there."

## No. 15.

PHOENIX, ARIZONA, *Feb. 17/05.*

"I have been thinking of starting home in a week or two, but am afraid of the weather. I may come anyway, and have a shed built out on the porch off the bathroom and sleep out there and try the home sure. Charlie doesn't want me to come at all. He candidly tells me he believes it will be my finish, and he may be right, but I have an idea I just as well take my finish at home as out here."

## No. 16.

PHOENIX, ARIZONA, *Feb. 21/05.*

"How is the weather at home. Still pretty bad I suppose. I was very much tempted to come home for the Inauguration, but have decided not to. I think I will be home by April first, however, and take my chances there."

## No. 17.

PHOENIX, ARIZONA, *Feb. 24, 1905.*

"I am tempted to start myself. I am mighty tired of it out here. I am rather inclined that home will do me more good than anything. How is the weather at home. I am coming home and try and forget my troubles. Dreamt I was back last night and was eating ham and cabbage at dinner. \* \* \* If you haven't gotten one (referring to an incubator for raising chickens) get it when I get back and start it."

## No. 18.

PHOENIX, ARIZONA, *Feb. 28, 1905.*

"Believe I wrote you that I thought of coming home next Sunday, March 5th. Will in that case arrive on the 10th, but do not know yet whether I shall leave. The S. Pac. may be washed out, and in that case will have to wait as I want to come back by New Orleans. I will let you know at least two days before I arrive, by telegram. Would wire from here, but it costs large money, and I can wire from New Orleans or Atlanta. I am pretty sure of starting Sunday. Will talk over Oakland trip when I get back. Just at present Washington is all I want. How is everything there. I'll bet there is a crowd for the Inauguration. I agree with you about coming out here. I heartily wish I had stayed at home."

## No. 19.

PHOENIX, ARIZONA, *Mar. 3, 1905.*

"Just received your last letter and am a thousand times obliged for the check. Will save it until I get home, though guess you have long since received my last letter telling you about coming home. When you receive this I will be nearly there if things go right. I have had quite a spell of sickness, biliousness like I had at home

91 before I left. I am mighty sorry to hear that such fine weather at home, as we are bound to have bad weather later.

"In like a lamb" you know. Well I will soon be home now for better or for worse. Love to all. Lots for you."

WASHINGTON, D. C., *April 24, 1905.*

It is hereby stipulated and agreed by and between counsel for the respective parties to this cause that the foregoing and annexed transcript, in narrative form, of the testimony produced before the Auditor at the hearings had before him upon the reference of this cause, and the extracts from the letters offered in evidence by the respective parties, is a true and faithful transcript of such testimony and of such letters, and contains the substance of all the evidence produced by the respective parties in this cause and of the exhibits introduced in evidence by them, and may be used in lieu of the original testimony in making up the record in this case.

It is further stipulated and agreed that the attorneys for Mrs. Sarah A. Thorn do not concede that the aforesaid Charles E. Thorn, Joseph A. Thorn and Helen T. McLaughlin have any right to an appeal.

GITTINGS & CHAMBERLIN,  
Attorneys for Mrs. Sarah A. Thorn.  
ALEXANDER WOLF,  
JOSEPH D. SULLIVAN,  
Attorneys for Charles E. Thorn, Joseph A. Thorn  
and Helen T. McLaughlin.

\* \* \* \* \*

92      *Exceptions of Charles E. Thorn to the Report of the Auditor Herein,*

Charles E. Thorn excepts to the Report of the Auditor upon his finding—

1st. That James A. Thorn at the time of his death was domiciled in the District of Columbia.

2d. That James A. Thorn in substituting a permanent domicile in the town of Westfield, New Jersey, for his domicile of origin nevertheless retained and had an intention to retain his domicile of origin with a view to its resumption sometime in the future.

3rd. That James A. Thorn, the decedent, in leaving his domicile of choice, Westfield, New Jersey, abandoned his said domicile.

4th. That the acts and letters of James A. Thorn, the decedent, to his mother constituted an intention to reside and take up his domicile in the District of Columbia.

5th. For failure of the auditor to consider the testimony of the sister of James A. Thorn, Helen Thorn McLaughlin, and the testimony of Charles E. Thorn and Joseph A. Thorn, the brothers of the decedent, and the testimony of the witnesses in the City of New York and in the town of Westfield, and to give full weight to the testimony of the nurse at the hospital where the said James A. Thorn died.

93      6th. For failure to find from all the evidence and the Law applicable thereto that James A. Thorn was domiciled elsewhere other than the District of Columbia.

7th. For failure to find from the evidence and the Law applicable thereto that James A. Thorn was domiciled in Westfield, New Jersey, at the time of his death.

8th. For finding that the fact of his returning to the City of Washington on account of ill health when it appeared from the testimony that it was his intention to return to Westfield, New Jersey, that his returning to said City of Washington was evidence of domicile.

9th. For his failure to find that James A. Thorn acquired a domicile of choice in Westfield, New Jersey.

10th. For his failure to be governed by the Law of domicile that where change of domicile is alleged as in this case change from his domicile of choice, Westfield, New Jersey, to the domicile of origin,

District of Columbia, the burden of proving it rests upon the party making the allegation.

11th. For his failure to be governed by the Law of domicile which holds where the person leaves his domicile of choice, not with a view of a permanent abode elsewhere, but only to recover his health or prolong his life by travel, he does not thereby change his domicile, and that an intention to return to his domicile of choice still retains that domicile.

12th. For his failure to be governed by the Rule of Law that the mere speaking of a place as home even though there may be a re-return to it does not in itself amount to domicile, and where the person returning to that home expresses an intention to remain there temporarily and thereafter return to his domicile of choice.

94

C. E. THORN.

STATE OF NEW YORK, *County of New York*, ss:

I do solemnly swear that I have read the foregoing Exceptions to the Auditor's report and that the same are not filed for delay; that the allegations of fact in said exceptions are true to the best of my knowledge and belief.

C. E. THORN.

Subscribed and sworn to before me this 31st day of January, A. D. 1906.

[NOTARIAL SEAL.]

GEORGE W. GLAZE,  
*Notary Public, N. Y. Co.*

I certify that in my opinion the matters of Law stated in the above Exceptions to Auditor's Report are well founded in Law.

ALEXANDER WOLF,  
*Attorneys for Charles E. Thorn.*

\* \* \* \* \*

95 NOTE.—Exceptions to like effect were filed by Joseph A. Thorn and Helen Thorn McLaughlin.

\* \* \* \* \*

96 This cause coming on to be heard upon the Auditor's Report and exceptions filed thereto by Charles E. Thorn, Joseph A. Thorn and Helen Thorn McLaughlin, and after having been fully argued by the attorneys for all the parties, in interest and duly considered by the Court, it is therefore by the Court and the authority thereof this 20th day of February, 1906, Adjudged, Ordered and Decreed, that all of said exceptions be and the same are hereby overruled; and that said Report of the Auditor be, and the same is hereby ratified and confirmed.

It is furthered Adjudged, Ordered and Decreed, that letters of administration on said estate be, and the same hereby are granted unto Sarah Addison Thorn, upon her giving a special bond in the penalty of one thousand Dollars conditioned for the payment of all debts and



claims against the deceased, and all damages which shall be recovered against her as administratrix.

WENDELL P. STAFFORD, *Justice*.

From this decree Charles E. Thorn, Joseph A. Thorn and Helen Thorn McLaughlin appeal in Open Court to the Court of Appeals and it is ordered that the appeal bond be fixed in the penal sum of One hundred dollars.

WENDELL P. STAFFORD, *Justice*.

\* \* \* \* \*

In the Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye, that administration of all the money, goods, chattels, rights, and credits of James Addison Thorn, late of the *the* District of Columbia, deceased, is hereby granted and committed unto Sarah Addison Thorn, Administratrix, of the District of Columbia.

Witness the Honorable Harry M. Clabaugh, Chief Justice of said Court, this 23rd day of February, A. D. 1906.

Attest:

[COURT SEAL.]

WM. C. TAYLOR,  
*Deputy Register of Wills for the District of Columbia,*  
*Clerk of the Probate Court.*

Case No. 13,003.

\* \* \* \* \*

99-101 Upon application to the Court and due notice to all parties in interest, it is by the Court this 13th day of March, 1906, ordered, adjudged and decreed that Charles E. Thorn, Joseph A. Thorn and Helen Thorn McLaughlin, who appealed in open Court to the Court of Appeals from the decree passed therein on the twentieth day of February, 1900, may in lieu of the appeal bond heretofore affixed in this cause deposit the sum of fifty dollars with the Register of this Court, the same to be in lieu of the said appeal bond.

By the Court:

WENDELL P. STAFFORD, *Justice*.

NOTE.—\$50. deposited in lieu of Appeal Bond M'ch 13, 1906.

\* \* \* \* \*

102 & 103 The Register of Wills will please prepare the transcript of record for transmission to the Court of Appeals in the above entitled cause, omitting therefrom all formal parts, and the exceptions to the Auditor's Report, filed by Joseph A. Thorn and Helen T. McLaughlin, they being identical with those

exceptions filed by Charles E. Thorn, and substituting for the testimony in the cause the transcript of testimony filed herein.

ALEXANDER WOLF,  
JOSEPH D. SULLIVAN,  
*Attorneys for Charles E. Thorn, Joseph A.  
Thorn, and Helen T. McLaughlin.*  
GITTINGS & CHAMBERLIN,  
*Attorneys for Sarah A. Thorn.*

\* \* \* \* \*

104

Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify the foregoing pages, numbered from 1 to 103, inclusive, to be true copies of the originals of certain papers on file in the office of the Register of Wills, Clerk of the Probate Court, in case No. 13,003, estate of James A. Thorn, deceased, wherein Charles E. Thorn, Joseph A. Thorn and Helen Thorn McLaughlin, are appellants, and Sarah A. Thorn is appellee, the same constituting a true and correct transcript of record of proceedings had in said cause according to the order of counsel filed therein and made a part hereof.

I further certify, that the bond for appeal, in the penalty of \$50. (deposited in Registry in lieu of appeal bond), was duly filed by said appellants, and approved by said Court on the 13th day of March, A. D. 1906.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 2nd day of May, A. D. 1906.

[Seal Supreme Court of the District of Columbia,  
Probate Jurisdiction.]

JAMES TANNER,  
*Register of Wills for the District of Columbia,  
Clerk of the Probate Court.*

105 In the Court of Appeals of the District of Columbia.

CHARLES E. THORN ET AL., Appellants,  
*vs.*  
SARAH A. THORN, Appellee.

The Clerk in printing the record in the above-entitled cause is instructed to omit the parts hereinafter designated, the same being deemed immaterial for the fair and full hearing of the cause:

All of pages 1 and 2; first five and last five lines on page 6; first five and last four lines page 7, all pages 8 and 9; last four lines page 12; first 5 and last three lines page 13; all pages 18 to 29 inclusive;

first five and last three lines page 30; first five and last four lines page 31; first five and last five lines page 32; first five and last four lines page 33; first five and last three lines page 34; first five and last three lines of page 35; last two lines page 43; first five lines page 44; last two lines page 91; first five lines page 92; first 17 and last 3 lines page 95; first five lines page 96; last five lines page 97; last three lines page 98; first five and last three lines page 99; all pages 100 and 101; first five and last four lines page 102 and all page 103.

ALEXANDER WOLF,  
JOSEPH D. SULLIVAN,  
*Attorneys for Appellants.*

We consent to omissions as above except all of pages 1 and 2, 8 and 9, which we desire printed.

GITTINGS & CHAMBERLIN,  
By J. M. CHAMBERLIN.

May 5, 1906.

(Endorsed:) No. 1666. Charles E. Thorn, Joseph A. Thorn and Helen Thorn McLaughlin, Appellants vs. Sarah A. Thorn. Appellants' designation of parts of record to be omitted in printing together with consent of appellee. Court of Appeals, District of Columbia. Filed May 5, 1906. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1666. Charles E. Thorn *et al.*, appellants, vs. Sarah A. Thorn. Court of Appeals, District of Columbia. Filed May 2, 1906. Henry W. Hodges, clerk.